

THE VOICE OF RANK-AND-FILE WORKERS IN THEIR UNION

Introduction

No study of the 21st century American worker would be complete without some review of the legislation enacted to ensure basic standards of democracy and fiscal responsibility in private industry labor organizations.¹ When it enacted the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA),² Congress noted that it had found “a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation.”³

The Committee on Education and the Workforce gave considerable attention to the LMRDA during the 105th Congress. Congressman Harris Fawell, Chairman of the Subcommittee on Employer-Employee Relations, held a series of four hearings on the subject of “impediments to union democracy.” As Chairman Fawell commented at the opening hearing on May 4, 1998: “Union members’ right to participate in their unions is protected by a ‘Bill of Rights’ modeled on the protections of the U.S. Constitution. Unfortunately, too many unions are governed by ‘one party’ rule. When rank-and-file workers are denied a voice in their union, corruption and abuse are far more likely to occur.”

Chairman Fawell’s hearings included testimony from members of academia as well as unions. One result of the hearings was the Democratic Rights for Union Members (DRUM) Act of 1998,⁴ which would have amended the LMRDA by allowing local rank-and-file members to more easily test the validity of a trusteeship imposed by the international union. It also would have required that officers of intermediate bodies, which have assumed the rights, and functions of locals be elected by direct membership vote, just as is required with local officers.⁵ The Subcommittee on Employer-Employee Relations will continue this series of hearings in the next Congress in an effort to identify further legislative solutions to other union democracy issues.

International Association of Machinists and Aerospace Workers, District 751

District 751 represents approximately 40,000 members of the International Association of Machinists and Aerospace Workers at six Boeing facilities in the Puget Sound area of Washington State. The American Worker Project learned that District 751 has been controlled by an incumbent group, now known as the “Dedicated Unionists,” since 1980. In an election held on January 9, 1997, Bill Johnson, the incumbent president of District 751, defeated David Clay by 174 votes in the closest election in District 751 history. Mr. Clay’s running mate on the “Choice for a Change” slate, Kim Stover, won election as Secretary Treasurer by 224 votes, a further indication that this was a particularly close election.

The Department of Labor's Office of Labor-Management Standards (OLMS) conducted an investigation of this election pursuant to a complaint filed by Mr. Clay. OLMS is the Department of Labor Agency that was established to administer the LMRDA. Investigators from the OLMS district office in Seattle interviewed dozens of witnesses and collected numerous documents. On July 7, 1997, they submitted their written analysis and recommendations to their District Director. The investigators concluded that Mr. Johnson and his administration did in fact violate the Act by campaigning at the Everett polling site: "[Johnson's] mere presence, and the prevention of other candidates to similarly campaign, clearly impacted the presidential race." They also concluded that the incumbents violated the act by improperly handling absentee ballots and misusing union billing accounts for election day van rentals. Based on this analysis, the investigators then recommend "a new election for all positions in which the 'Dedicated Unionists' were victorious." This memorandum was forwarded to OLMS in Washington along with the complete investigation file.

By letter of October 31, 1997, Lary H. Yud, Chief of OLMS' Enforcement Division in Washington, informed Mr. Clay that his agency was closing its investigation and would not seek a court order to set this election aside. Mr. Yud's letter indicates that the Solicitor of Labor was consulted on this decision. The "Statement of Reasons," that accompanied Mr. Yud's letter is attached as Appendix 8. Though the Statement of Reasons actually confirms a number of violations, it also concludes that there was "no probable cause to believe" that these violations "may have affected the outcome of" the election. While this standard for agency action is stated in the Department of Labor's regulations,⁶ the LMRDA itself clearly provides that the Secretary of Labor "*shall* bring a civil action" whenever there is "probable cause to believe that a violation . . . has occurred."⁷(emphasis added). According to the LMRDA, it is then for the court, not the Secretary of Labor, to decide whether "the violation . . . may have affected the outcome of" the election.⁸

American Worker Project Action

The American Worker Project reviewed a copy of the OLMS investigation file and questioned the Department of Labor's decision not to act.⁹ Given the sort of LMRDA violations documented by the Seattle investigators, and the 174-vote margin of victory, how could the decision-makers in Washington D.C. have concluded that there was "no probable cause to believe" that these violations "may have affected the outcome of" the election? Chairman Hoekstra asked that American Worker Project staff travel to Washington State to investigate these allegations. The staff spoke with seventy or more District 751 members, many of whom were not supporters of David Clay. These members described numerous questionable actions taken by Mr. Johnson and his Dedicated Unionists administration, many of which were documented in the OLMS investigation. More importantly, it seemed that most of these actions, if proven, would have constituted LMRDA violations that "may have affected the outcome" of this very close election. We were told, for instance, that:

- Mr. Johnson, whose personal office is in Seattle, spent most of election day greeting voters and otherwise campaigning both outside and inside the Everett Union Hall. Some 2,400 members voted at the Everett Union Hall that day. This would be a clear violation of District 751's own rule that "[t]here shall be no loitering or campaigning in the polling places or within a five hundred (500) feet radius of same" and therefore a violation of the LMRDA.¹⁰ Campaigning for all other candidates was restricted to an area on the other side of a four-lane highway well away from the union hall.
- In the weeks leading up to the election, Mr. Johnson and his supporters campaigned extensively to captive groups in the various Boeing plants on union time.¹¹
- Union billing accounts were used to obtain discount rental vans that were used exclusively to transport Dedicated Unionists voters from the Boeing plants to the polls on election day. These rentals were billed directly to the union, though Mr. Johnson's campaign did eventually pay the bills.¹²
- Boeing allowed drivers showing union security passes to bring these vans onto company property to pick up Dedicated Unionists voters.¹³
- The Dedicated Unionists had exclusive use of union phone banks.¹⁴
- Incumbent personnel gave the Dedicated Unionists preferential access to union's mailing facilities.¹⁵
- Incumbent personnel mailed out 260 absentee ballots that contained the erroneous due date of December 30, 1996, and then confirmed this error when members questioned it by phone. As a result, many of these members thought it was too late to vote, and the OLMS investigators in Seattle determined that 172 of these members in fact did not vote. These particular absentee ballots had all been requested through the campaign organizations of rival candidates.¹⁶
- Incumbent personnel destroyed the envelopes for all 1,019 absentee ballots that were counted, making it impossible to verify the identity and eligibility of the absentee voters.¹⁷
- Incumbent personnel "lost" the ballot box from the Spokane polling site, after signing for its receipt from UPS at union headquarters in Seattle, making an audit of the 286 votes that were counted impossible.¹⁸

While the Statement of Reasons from OLMS in Washington, D.C., actually confirmed that some of these actions were violations of the LMRDA, the Department of Labor did not proceed with court action because it was not shown that the violations "may have affected the outcome of the election." At Chairman Hoekstra's request, the American Worker project continued this investigation with interviews of Seattle OLMS District Director John Heaney, and Seattle OLMS Investigators Daniel Lavik and Don Logston. In the course of these interviews,

the Seattle OLMS staff defended their original recommendation that the election should be overturned. They also provided a copy of a supplementary investigation that was accepted by OLMS in Washington D.C. from union attorney David Campbell. In the opinion of the Seattle OLMS staff, this supplementary investigation was not necessary.

Interviews were then conducted of Washington D.C. OLMS staff, including Deputy Assistant Secretary John Kotch, Chief of Enforcement Lary H. Yud, and Investigator Mary Alice Cahir. Also interviewed were Dennis Paquette and Willie Shaird of the Office of the Solicitor. In the course of these interviews, the Washington D.C. staff acknowledged that they agreed to Mr. Campbell's supplementary investigation and did their best to justify the decision not to seek a new election. From these interviews, the American Worker Project was unable to determine the extent to which the OLMS process might have been susceptible to third party influence.

Other LMRDA Weaknesses

In its investigation of the now overturned election of Ron Carey as President of the International Brotherhood of Teamsters ("Teamsters"), and through additional research on the part of the American Worker Project, the Subcommittee on Oversight and Investigations found additional provisions of the LMRDA that need updating.

The LM forms, a system of annual financial reports that requires labor unions to disclose financial data, including assets and liabilities, loans, and salary and expense payments to union officers and employees, allow rank-and-file union members and the Department of Labor to monitor unions for inappropriate transactions and management. Unfortunately, the LM-2 Form, which the Department requires of the nation's largest private-sector labor organizations, does not demand sufficient detail in several key areas.

Currently, federal employees who are union members do not have the same legal safeguards as private sector employees who are union members. When the LMRDA was passed in 1959, public employee unions were a small component of the American labor movement. Public unions now represent over 40 percent of all union workers in this country. The ongoing criminal investigation within the American Federation of State, County, and Municipal Employee's (AFSCME) District Council 37 in New York City raises questions about whether the corrupt practices uncovered there could have been prevented if public employee unions were subject to the same laws as other unions.

Additional information on these LMRDA weaknesses can be found in the Recommendations section of this report, and in the Subcommittee on Oversight and Investigation's report on the failed Teamster election.

Findings and Recommendations

Many of the District 751 members who spoke to the American Worker Project have lost considerable respect for the Department of Labor. In fact, most believe the OLMS decision not to seek a new election was a political favor, and many remarked that “we’re living in a banana republic here” and “I thought this was America.” Repeating the words of Chairman Fawell, “[u]nfortunately, too many unions are governed by ‘one party’ rule. When rank-and-file workers are denied a voice in their union, corruption and abuse are far more likely to occur.” And, when rank-and-file workers come to believe that the agency charged with enforcing the LMRDA is just another part of this problem, then government has failed and failed badly.

- The American Worker Project recommends that an investigation of this matter continue in the 106th Congress. Site hearings in the Seattle area would allow District 751’s members to voice their concerns directly to Congress. And it is recommended that oversight hearings be held in Washington D.C. so that OLMS and the Office of the Solicitor can explain their process, and their decision not to seek a new election, to Congress.
- Furthermore, the LMRDA clearly states that it is for the courts, not the Secretary of Labor, to decide whether a “violation . . . may have affected the outcome of” an election. Congress should therefore consider requiring the Department of Labor to adopt practices closer to those contemplated by the plain language of the statute.
- Congress should reevaluate the quality of the information obtained under the Labor-Management Reporting and Disclosure Act and update these requirements.
- Congress should determine whether the regulations and practices in place at the Department of Labor and the Office of Labor-Management Standards provide for informative, accurate, timely, and complete financial disclosure on LM forms.
- Congress should reevaluate the scope of the LMRDA to determine whether the public employee unions should be exempt from the Act.

¹ Despite the broad intent of the LMRDA to ensure basic standards of democracy and fiscal responsibility in American labor organizations, public employee unions were exempted from its provisions. Though the Civil Service Reform Act of 1978 (CSRA) established parallel standards for federal employee unions (5 U.S.C. § 7120), the CSRA gave federal employees no right to sue their unions to enforce their interests. See *Celli v. Shoell*, 40 F.3d 324 (10th Cir. 1994). When the LMRDA was passed in 1959, public employee unions were a small component of the American labor movement. According to the Bureau of the Census, however, public unions now represent over 40 percent all union workers in this country. The combined membership of the American Federation of Teachers and the National Education Association exceeds 3 million, and the American Federation of State, County and Municipal Employees (AFSCME) has a membership of over 1.3 million. The American Worker Project has followed with interest the ongoing criminal investigation within AFSCME’s District Council 37, whose 56 locals represent 120,000 New York City municipal workers. It is expected that dozens of union officials will be indicted on charges of embezzlement, extortion and other financial wrongdoing that public financial disclosure might have prevented. The American Worker Project recommends that Congress open an inquiry on the issue of the public employee union exemption from the LMRDA.

²29 U.S.C. § 401 et seq.

³29 U.S.C. § 401(b).

⁴ Introduced on October 9, 1998

⁵ Professor Summers and Mr. Benson also submitted materials for the Democratic Rights for Union Members (DRUM) Act of 1998.

⁶29 CFR § 452.136(b).

⁷29 U.S.C. § 482(b).

⁸29 U.S.C. § 482(c)(2).

⁹ Chairman Fawell of the Subcommittee on Employer-Employee Relations (EER) was contacted by David Clay with regard to this election on April 17, 1998. EER staff interviewed Mr. Clay on May 15, 1998 and conducted additional investigation, preparing the matter for review under the Subcommittee's series of hearings on union democracy. On June 23, 1998, EER staff conducted an on-site review of the investigative file at OLMS. A copy of the file was provided by OLMS to Chairman Fawell on June 26, 1998.

¹⁰29 U.S.C. § 481(e). See also 29 CFR §§ 452.110(a) and 452.111.

¹¹29 U.S.C. § 481(g). See also 29 CFR §§ 452.76 and 452.78.

¹²29 U.S.C. § 481(g). See also 29 CFR § 452.73.

¹³29 U.S.C. § 481(g). See also 29 CFR §§ 452.76 and 452.78.

¹⁴29 U.S.C. § 481(g). See also 29 CFR § 452.76.

¹⁵29 U.S.C. § 481(c). See also 29 CFR § 452.67.

¹⁶29 U.S.C. § 481(c). See also 29 CFR §§ 452.94, 452.95 and 452.110(b).

¹⁷29 U.S.C. § 481(e). See also 29 CFR §§ 452.97 and 452.106.

¹⁸29 U.S.C. § 481(e). See also 29 CFR § 452.106.